

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0388P

Use Tax

Calendar Years 1995, 1996

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer protests the penalty assessed on an audit completed on May 1, 1998.

Taxpayer failed to self-assess and remit use tax. Taxpayer is an Ohio Corporation qualified to do business in Indiana on June 20, 1990. Taxpayer is registered in Indiana, has been previously audited and failed to collect and remit use tax.

Taxpayer was assessed use tax on construction material. Taxpayer had no use tax accrual system in place.

1. **Tax Administration** – Penalty

DISCUSSION

Taxpayer requests a waiver of penalty because they were not aware that use tax is due when an item is put into use. Taxpayer further states that in the State of Ohio, they are able to pay the tax at the close of a job or at the time of the "use" of the materials, they made the assumption that the State of Indiana handled the use tax the same way. In that they were not aware at the outset of the project that the tax need be paid as the material was being used, they request that the penalty be waived.

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Taxpayer's audit revealed that no use tax accrual system was in place. Taxpayer failed to self-assess as required by statute. 45 IAC 2.2.3-20 clearly states that all purchases of tangible personal property which is stored, used, or consumed in the state of Indiana are subject to the tax.

Taxpayer was audited in 1988 and found in compliance in paying use tax due.

The taxpayer was negligent in failing to self assess use tax due.

FINDING

Taxpayer's protest is denied.